

## REMARKS

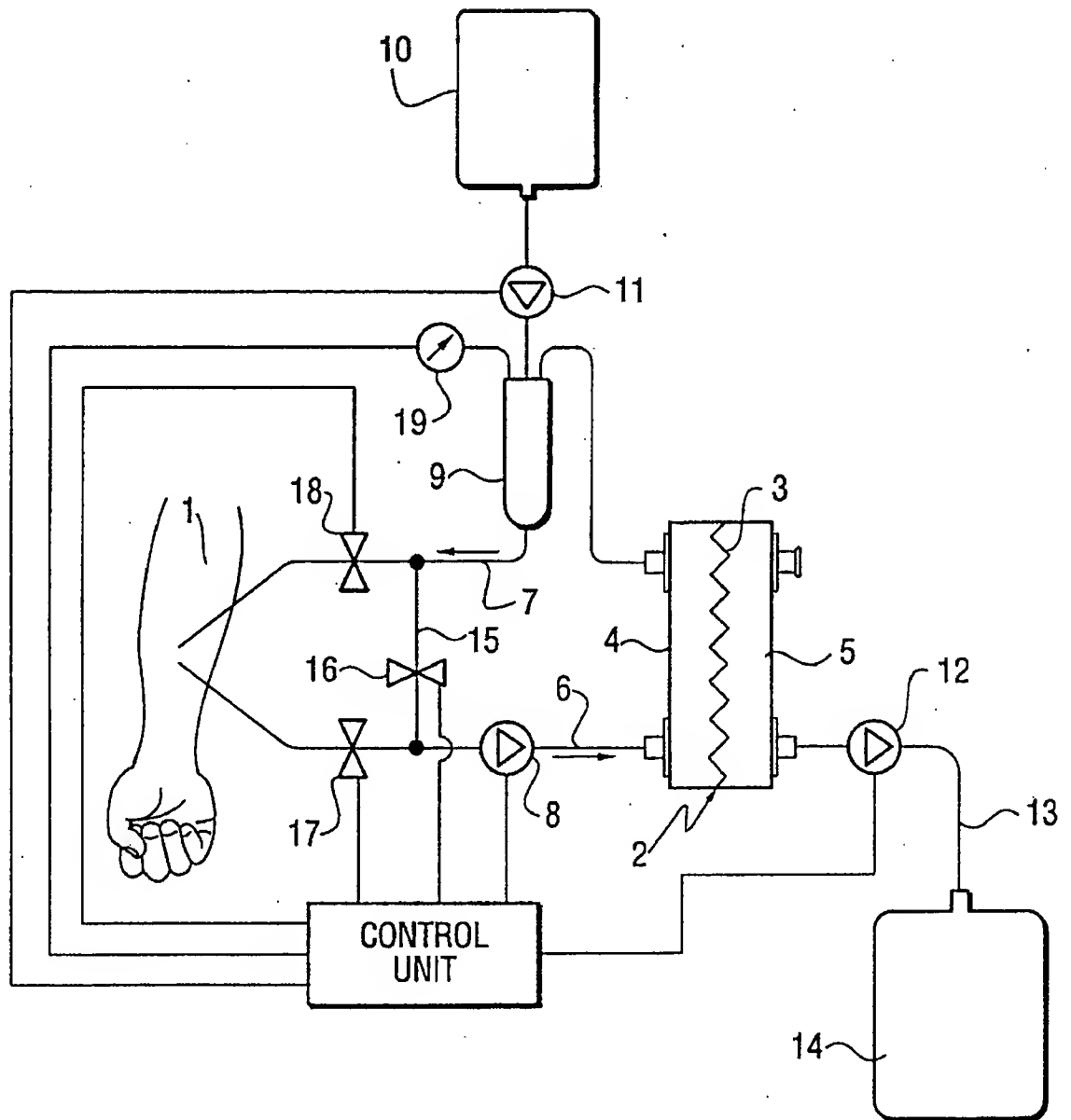
This Response is to the final Office Action dated August 28, 2006. Claims 1 to 107 were pending previously in this application. Claims 1 to 13 and 39 to 98 have been withdrawn due to a restriction/election requirement. Newly submitted Claims 99 to 107 (submitted in previous Response) were withdrawn from consideration in this Office Action. Claims 14 to 38 stand rejected.

Claims 99 to 107 have been amended herein. No new matter has been introduced by way of any of the amendments. It is believed that no fee is due in connection with this Response, however, please charge Deposit Account No. 02-1818 for any fees deemed owed.

In the Office Action, Claims 14 to 20 and 33 to 37 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,470,483 to Bene et al. ("*Bene*"). Claims 21 to 26 were rejected under 35 U.S.C. § 103(a) as being obvious in view of *Bene* and U.S. Patent No. 6,830,553 to Burbank et al. ("*Burbank*").

Regarding Claim 14, in the "Response to Arguments" section of the Office Action, it is stated that pump 11 is capable of isolating filter 4 (see Fig. 1 of *Bene* below) from the medical device supply 10.

**FIG. 1**



If the Office Action's assertion is taken as true, namely that pump 11 teaches the isolating device of Claim 14, then there appears to be no way, when pump 11 is stopped, for any control

scheme of *Bene* to command pump 11 or any other pump “to deliver a volume of fluid to the extracorporeal circuit” as provided in Claim 14. Claim 14 calls for an apparatus operable to isolate the blood filtering device from the rest of the medical fluid flow path. It does not require the apparatus to isolate the supply from the extracorporeal circuit. Pump 11 does just that, and by doing so it precludes the delivery of fluid from supply 10 to the extracorporeal circuit. Bag 14 is an ultrafiltrate collection bag, not a supply bag. *Bene* therefore cannot meet the claim. Applicants accordingly respectfully submit that Claim 14 and Claims 15 to 38 that depend from Claim 14 are in condition for allowance. The patentability of Claim 14 renders moot the obvious rejection of Claims 21 to 26 in view of *Bene* and *Burbank*.

Applicants also respectfully submit that in the alternative the finality of the rejection of Claims 14 to 38 in view of *Bene* or *Bene* and *Burbank* should be withdrawn. No new art has been cited. No amendment has necessitated the new grounds for the instant rejection. In that regard, the previous Office Action at Page 3 emphasized that *Bene* taught that its device may isolate the circulating blood *from the patient* (emphasis added). Now, it is asserted that pump 11 of *Bene* is capable of isolating filter 4 from the medical device supply 10. Applicants respectfully submit that the current rejection is more closely focused on the pending claims but that it still does not necessitate an amendment of base Claim 14. Applicants deserve an opportunity to amend the claims substantively at least once if necessary. Applicants accordingly respectfully request that the finality of the rejection of Claims 14 to 38 in view of *Bene* or *Bene* and *Burbank* be withdrawn if Claims 14 to 38 are not allowed.

Applicants also respectfully traverse the interpretation of the term “bolus” in the Office Action. Consistent with the Federal Circuit’s position on the use of dictionary definitions in claim interpretation, it is respectfully submitted that the Specification of the application controls and in this case clearly sets forth a difference between normal therapy (in which liters upon liters of dialysate or replacement fluid is used to cleanse the patient’s blood), from a situation in which the patient needs a bolus or “dose” of fluid to prevent the patient from becoming hypotensive. [see US 2005/0131331, e.g., paragraph 64] Moreover, it is respectfully submitted that as used in the art, a broad but *reasonable* interpretation of a “bolus” of fluid would be different from a standard therapy flowrate of dialysate or replacement fluid.

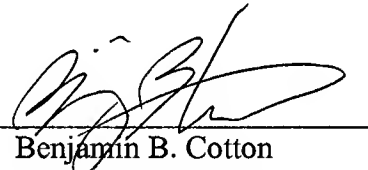
Independent Claims 99, 102 and 105 have been amended to recite a “control scheme” as claimed in originally examined Claim 14. Accordingly, Applicants respectfully request the withdrawal of the election/restriction placed on Claims 99 to 107. Moreover, Applicants respectfully submit that based on the foregoing discussion, *Bene* and the other art of record do not teach or suggest new Claims 99 to 107.

Dependent Claims 100, 101, 103, 104, 106 and 107 have been amended for minor errors unrelated to patentability and have not been made to overcome the art of record or to disclaim any subject matter with respect to same. Likewise in Claim 100 “or” has been changed to “and”. This amendment too has not been made to overcome the art of record or to disclaim any subject matter with respect to same.

For the foregoing reasons, Applicants respectfully submit that the above-identified patent application is now in condition for allowance and earnestly solicit reconsideration of same. The Commissioner is hereby authorized to charge Deposit Account 02-1818 for any fees which are due and owing.

Respectfully submitted,  
BELL, BOYD & LLOYD LLC

BY



Benjamin B. Cotton  
Reg. No. 54,050  
Customer No. 29200

Dated: November 28, 2006